

9 Official Opinions of the Compliance Board 239 (2015)

- ◆ 1(B)(3) **“MEETING”:** DEFINITION NOT MET BY SITE VISIT CONDUCTED IN GROUPS COMPRISING LESS THAN A QUORUM WHEN GROUPS DID NOT INTERACT
- ◆ 7(D) **COMPLIANCE BOARD OPINION:** INSUFFICIENT INFORMATION ON WHETHER INTRODUCTION TO SITE VISIT WAS SUBJECT TO THE ACT

*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at http://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf

April 14, 2015

Re: Wicomico County Council
Phil David, The Daily Times, Complainant

Phil Davis, of The Daily Times, has complained that the County Executive of Wicomico County violated the Open Meetings Act on January 10, 2015, by convening a quorum of the Wicomico County Council to tour an elementary school and failing to give public notice of that event. Because the County Executive, an individual, is not a “public body” subject to the Act, we deem the complaint to allege a violation by the Council, which is subject to the Act. The County Attorney has responded on the Council’s behalf.

The threshold question here is whether the January 10 event was a “meeting” subject to the Act. If the event was a Council meeting, then the Council violated the Act by failing to give notice and admit the public; if it was not a meeting, the Act did not apply and so was not violated. As we will explain below, we cannot answer that question as to every phase of the event.

Facts

In December 2014, the Council was considering for budgeting purposes whether a particular elementary school building should be renovated, or, as had been requested by the county school board, replaced. On December 30, 2014, the County Executive invited the council members and others to tour the building on January 10, 2015. The e-mailed invitation stated that there “will be a team of local professionals to help us assess the school and any problems that the Board of Education currently feels they have with [the

school].” The e-mail further stated that the “tour will give us the ability to take a look at the school in an objective manner and formulate decisions for upcoming bond issues.” The general public was not invited to the tour.

A press release issued on January 11 shows that five of the seven council members attended the tour, as did a “community activist,” “community members with expertise in construction, electrical, roofing and building maintenance,” the school principal, and various school board and county employees. A summary of the event showed that 24 people in all attended and that “[e]ach area of expertise will provide the County Executive with their assessment of the building.” The County Attorney and County Administrator, who normally attend the council’s meetings, were not asked to attend. Upon interviewing the council members who had taken the tour, the County Attorney learned that the County Executive had briefly welcomed the attendees and suggested that they break up into small groups. None of the council members recalled being in a group with more than one other council member, and it takes four members to create a quorum, so a quorum was not present during the actual tour. As quoted by Complainant in an article he wrote about the event, the Council President stated that the Council had not voted on legislation during the tour and had made “no specific decision.” In the response, the Town Attorney states that “the Council has now been advised that the Open Meetings Act is not limited to meetings where decisions are being made or action taken, but also to meetings where information on matters involving public business is being conveyed.”

Discussion

The Open Meetings Act provides, “Except as otherwise expressly provided in this title, a public body shall meet in open session.” § 3- 301.¹ “Meet,” under the Act, means “to convene a quorum of a public body to consider or transact public business.” §3-101 (g). As relevant here, that means two circumstances have to coincide for the Act to apply: a quorum of the public body’s members is present, and they are considering or transacting public business. It does not matter who convened the gathering or that the presence of a quorum was unexpected. *See 3 OMCB Opinions 30 (2000)* (giving examples of when an unplanned gathering of a quorum constitutes a “meeting”).² And, as the Council has now been advised, it does not matter that the public body is not acting or deciding the business at hand. As we explained in *3 OMCB Opinions 30*, “a presentation linked in a specific way to a topic before the body . . . is the conduct of public business.” There, we

¹ All statutory references are to the General Provisions Article of the Maryland Annotated Code (2014).

² <http://www.oag.state.md.us/Opinions/Open2000/om00-8.pdf>, posted as Opinion No. 00-8 in Volume 3.

found that “briefing about [a supplemental budget], even if limited in scope and devoid of discussion, constituted part of the conduct of public business.” *Id.* at 34.

These principles are easy to apply to the small-group tours: although the separate members in those groups were considering public business, they were not doing so in the presence of a quorum of the Council, and so the Act did not apply.³ It is harder to characterize the gathering of the Council to hear the County Executive’s welcoming remarks, so we will address that question in the alternative. If his remarks consisted only of a greeting and a division of the attendees into small groups, it seems unlikely that the Council, as a body, was considering public business. If, instead, the remarks included comments on such things as the purpose of the tour, particular features of the building, or recommendations on the matter before the Council, then the occasion fell into the same category as the briefing we addressed in 3 *OMCB Opinions* 30: although perhaps limited in scope and devoid of discussion among the Council members, the presentation would have constituted part of the conduct of public business. We do not know enough about the content of the County Executive’s remarks to decide one way or the other.

We recognize that it can be logistically difficult to provide to the general public the ability to observe a site visit. *See, e.g.,* 78 *Opinions of the Attorney General* 240, 247 (1993) (opining that a juvenile facility that was not open to the public was “not a suitable place” for an open meeting); 8 *OMCB Opinions* 188, 190 (2013) (finding that task force violated the Act by meeting at a private facility that excluded people who wanted to attend the meeting); *see also* *WSG Holdings v. Bowie*, 429 Md. 598 (2012) (in applying open meetings requirements in a land use statute, holding that the public body did not hold an “open” meeting when it allowed only a few members of the public to attend a site visit on private property). Nonetheless, the Act is to be applied in accordance with its statement of the public policy of the State that meetings “shall be held in places reasonably accessible to individual who would like to attend [them].” § 3-102(c).

Conclusion

As noted above, it is a close question as to whether the five members of the Council who attended the January 10, 2015 tour of the school were considering public business in the brief period of time for which a quorum was present to hear the County Executive’s opening remarks. When there is a close question as to whether the Act will apply to an event, we encourage public bodies to proceed on the assumption that the Act does apply. We add the advice we gave at 3 *OMCB Opinions* 34: “members of a public body have a duty to be especially sensitive to Open Meetings Act issues when . . . a

³ There is no indication that the small groups interacted with each other in such a way as to create a quorum.

quorum is together, the setting is manifestly not a social one, and the topic bears directly on a pending matter.”

Finally, the Council did not violate the Act when its members toured the school in small groups that did not comprise a quorum of the Council’s members.

Open Meetings Compliance Board

Monica J. Johnson, Esquire
Wanda Martinez, Esquire
Mamata S. Poch, Esquire